

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2346 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

JOHN PITERBHAI MACWAN

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for Petitioner

GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 05/11/1999

ORAL JUDGEMENT

#. Heard learned advocate Mr.Satish .R. Patel for the petitioner and learned A.G.P. Mr.D.P.Joshi for the respondent nos.1 ,2 and 3.

#. The detention order dtd.3.2.99 passed by respondent no.1-Commissioner of Police, Ahmedabad, in exercise of power conferred under Sec.3 (1) of Gujarat Prevention of Anti Social Activity Act 1985 ("PASA" for short) is

challenged in the present petition under Art.226 of the Constitution of India.

#. The grounds of detention served to the petitioner under Sec.9 (1) of PASA, copy of which is produced at Annexure C interalia indicate that four prohibition cases are registered against the petitioner at Amraivadi Police Station on 24.3.97, 9.5.98, 21.8.98 and 2.2.99. That in each case, country made liquor was seized from the possession of the petitioner. Furthermore, two witnesses on assurance of anonymity have supplied information against the petitioner in respect to incident dtd.14.1.99 and 24.1.99. That in consideration of said material, respondent no.1 has come to conclusion that petitioner is a "bootlegger" within the meaning of Sec.2 (b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti-social activity which adversely affects the maintenance of public order, the detention order is necessary and hence impugned order is passed.

#. The petitioner has challenged the impugned order on numerous grounds. It is contended that on the date of the order of detention, petitioner was in police custody. That the detaining authority has failed to consider less drastic remedy or claiming cancellation of bail in the pending case which shows non application of mind and as such the order is bad in law.

#. In the matter of Zubedabibi Rasidkhan Pathan Vs. State of Gujarat & Ors reported vide 1995 (2) G.L.R. P.1134, Division Bench of this court has expressed view that non consideration of less drastic remedy like cancellation of bail under Sec.437 (5) of Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal No.1056/99 decided on 15.9.99 by this court (Coram : C.K.Thakkar & A.L.Dave JJ).

#. On scrutiny of ground of detention, it appears that the detaining authority has observed that petitioner was in police custody in respect to C.R.No.5056/99 while he was released on bail in other cases. That the petitioner is likely to apply for bail at any time and having got himself released on bail, he is likely to continue his anti-social activity and as such detention order is necessary. The said observation discloses that the detaining authority has failed to apply his mind to the less drastic remedy of claiming cancellation of bail or opposing the bail. That the impugned order appears to

have been passed on apprehension rather than material and as such subjective satisfaction having been vitiated, the order is rendered invalid.

#. As the petition succeeds on the above-stated ground alone, it is not necessary to consider the other contention raised.

#. On the basis of aforesaid discussion petition is allowed. The detention order dtd.3.2.99 passed by the respondent no.2 against the petitioner is hereby quashed and set-aside. The petitioner John Piterbhai Macwan is ordered to be set at liberty forthwith, if not required in any other case.

#. Rule to that extent made absolute.

kks.